RECENT IMPORTANT DECISIONS

BANKRUPTCY—APPOINTMENT OF RECEIVER AS ACT OF BANKRUPTCY.—An insolvent corporation, against which a creditors' suit was brought in the state court, procured the appointment of a receiver therein by an answer and cross bill in the name of its president, who was a defendant, and who with one other stockholder owned the majority of the stock and controlled the corporation. *Held,* that the corporation applied for the appointment of a receiver within the meaning of §3a(4) of the BANKRUPTCY ACT, making such application, while insolvent, an act of bankruptcy; it being unnecessary that the application be by a bill or cross bill filed in the name of the corporation. *Graham Mfg. Co.* v. *Davy-Pocahontas Coal Co.,* 238 Fed. 488.

Though the debtor himself must make application, in case of corporations it is not always requisite that there be a formal declaration by the corporation, if the application for a receiver is substantially the act of the corporation; where those so applying control the corporation and especially where there is an attempt to evade the bankruptcy law, *Exploration Co.* v. *Pacific Co.,* 177 Fed. 825, 839, 101 C. C. A. 39; *James Supply and Hdwe. Co.* v. *Dayton Coal & Iron Co.,* 223 Fed. 991, 139 C. C. A. 367; *In re Maplecroft Mills,* 218 Fed. 659, 673; *Doyle-Kidd Dry Goods Co.* v. *Sadler Lusk Trading Co.,* 206 Fed. 813, even though the laws of the state court do not authorize such application, *Exploration Co.* v. *Pacific Co.,* supra. It is immaterial that receivership was not ordered because of insolvency if the corporation was actually insolvent. *James Hdw. Co.* v. *Dayton Coal & Iron Co.,* supra; *Hill* v. *Electric Co.,* 214 Fed. 243, 130 C. C. A. 613.

BANKRUPTCY—STATUTORY LIABILITY OF SHAREHOLDER AS PROVABLE DEBT.—A discharge in bankruptcy was pleaded as a defense to a suit against the shareholders of an insolvent corporation under a New York statute making them "individually responsible, equally and ratably, for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." Under §63 of the BANKRUPTCY ACT debts founded upon a contract, expressed or implied, are provable in bankruptcy. §14 provides for the discharge of provable debts. *Held,* that the liability was contractual, provable, and the discharge was a good defense. *Van Tuyl* v. *Schwab, et al.,* 164 N. Y. Supp —.

Under most statutes such liability is held to arise out of an implied contract and to accrue before the corporation becomes insolvent. *Platt* v. *Wilmot,* 193 U. S. 613, 24 Sup. Ct. 542, 48 L. ed. 809; *Whitman* v. *Oxford National Bank,* 176 U. S. 559; *Nimick* v. *Mingo Iron Wks. Co.,* 25 W. Va., 184; *Flash* v. *Conn,* 109 U. S. 371, 27 L. ed. 961. In many cases, however, the statutory liability is made a penalty for some misdeed, e. g., failure by the president or corporation to file a certificate showing amount of stock paid in. *Woods* v. *Wicks,* 7 Lea. 40; *Sayles* v. *Brown,* 40 Fed. 8. However, *Marshall* v. *Sherman,* 148 N. Y. 9, 42 N. E. 419, 34 L. R. A. 757, 51 Am. St. Rep. 654,

is to be distinguished from the principal case. In that case the court expressly declared the cause of action to be contractual, but refused to sustain it in New York against stockholders of a Kansas corporation.

BANKRUPTCY—STAYING AN ACTION PENDING IN STATE COURT.—§11(a) of the BANKRUPTCY ACT provides that a suit founded upon a claim from which a discharge in bankruptcy would be a release and pending against a person at the time of the filing of the petition *shall* be stayed until after an adjudication or dismissal of the petition, and that if such person is adjudged a bankrupt, such action *may* be further stayed until twelve months after the date of adjudication, etc. *Held,* that suit in the state court should have been stayed till after adjudication. *Anders Bros.* v. *Latimer,* (Ala. 1917), 73 So. 925.

Held, that whether the action is to be further stayed after an adjudication is to be determined by the trial judge in the exercise of his discretion. *Smith* v. *Miller,* (Mass. 1917), 115 N. E. 243.

Held, that the state court is not deprived of its jurisdiction by the stay, and may proceed after adjudication. *Brazil* v. *Azevedo,* (Cal. App. 1916), 162 Pac. 1049.

Because of the use of the word "shall" in the first part of §11(a) and of "may" in the second part, these three recent cases agree that till after adjudication a stay shall be granted as of right, but that thereafter the state court can exercise its discretion. Other cases to the same effect are *Rosenthal* v. *Nove,* 175 Mass. 559, 563, 56 N. E. 884, 886; *In re Gunacevi Tunnel Co.,* 201 Fed. 316, 119 C. C. A. 554. Only suits founded on claims provable and dischargeable are stayed under §11(a). *In re Macauley,* 101 Fed. 223; *Imbriani* v. *Anderson,* 76 N. H. 491, 84 Atl. 974. Those to which a discharge is not a release are not stayed, such as suits to require corporations to issue stock, suits based on fraud, or to recover fines imposed by state courts, etc. *In re Clipper Mfg. Co.,* 179 Fed. 843; *In re Wallack,* 120 Fed. 516; *In re Cole,* 106 Fed. 837; or suits in state courts to assert rights in rem, *Tennessee Marble Co.* v. *Grant,* 135 Fed. 322, 14 A. B. R. 288; *United Wireless Co.,* 192 Fed. 238. Even though the suit is commenced after the filing of the petition, it must be stayed as of right till after adjudication. *In re Basch,* 97 Fed. 761.

BANKRUPTCY—TRUSTEE'S RIGHTS UNDER UNRECORDED CONDITIONAL SALE.—Under §62 of the PERSONAL PROPERTY LAW of New York (CONSOL. LAWS, c. 41), providing that all conditions in a conditional sale contract, accompanied by delivery of the goods reserving title in the vendor, shall be void as against subsequent purchasers, pledgees or mortgagees in good faith, unless recorded, an unrecorded conditional sale contract is valid against the creditors of the buyer. §47a(2) of the BANKRUPTCY ACT gives to the trustee in bankruptcy the rights, remedies and powers of lien creditors. *Held,* that the trustee in bankruptcy acquired no rights to the goods. *Mergenthaler Linotype Co.* v. *Hull,* 239 Fed. 26.

§47a(2) as amended in 1910 confers upon the trustee the rights which the bankrupt or any creditor possessed at the time of filing the petition. *Potter Mfg. Co.* v. *Arthur,* 220 Fed. 843, 136 C. C. A. 589, Ann. Cas. 1916A 1268;